

IN THE COURT OF APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs August 17, 2004

**ANNA MAE PUCKETT, DECEASED, B/N/F ANTHONY PUCKETT v.
LIFE CARE OF AMERICA, d/b/a LIFE CARE OF MORRISTOWN**

**Appeal from the Circuit Court for Hamblen County
No. 01CV306 John K. Wilson, Judge**

No. E2004-00803-COA-R3-CV - FILED SEPTEMBER 24, 2004

This is a wrongful death action against a nursing home which was filed one year from the date of the patient's death. The Defendant nursing home filed a Tennessee Rule of Civil Procedure 12.02(6) motion requesting the Court to dismiss Plaintiff's claim for injuries suffered by Plaintiff, prior to her death on or about October 18, 2000, as same was barred by the one-year statute of limitations, Tenn. Code Ann. §28-3-104(a)(1). The Plaintiff responded by affidavit that suit was filed within one year of the discovery of the injury. The trial court granted the Defendant's motion to dismiss. On appeal, Plaintiff argued that the discovery rule applies, that the complaint was timely filed and that the trial court erred in granting the dismissal of Plaintiff's claims. We agree, vacate the dismissal and remand for further proceedings.

**Tenn. R. App. 3 Appeal as of Right; Judgment of the Circuit Court Vacated; Cause
Remanded**

SHARON G. LEE, J., delivered the opinion of the court, in which HERSCHEL P. FRANKS, P.J. and CHARLES D. SUSANO, J., joined.

Douglas C. Weinstein, Knoxville, Tennessee, for the Appellant, Anthony Puckett.

Clarence Risin, Knoxville, Tennessee, for the Appellee, Life Care of America d/b/a Life Care of Morristown.

OPINION

I.

On October 18, 2001, Anthony Puckett, ("Plaintiff") as son and next of kin of Anna Mae Puckett ("decedent") filed a complaint seeking recovery for the wrongful death of the decedent against the Defendants, Life Care of America, d/b/a Life Care of Morristown ("Life Care") and Dr.

W. Robert Gronewald.¹ The Complaint made the following allegations. On October 13, 2000, the decedent was admitted to Life Care with an admitting history of rheumatoid arthritis, hypertension, diabetes, urinary tract infection, and for rehabilitation after surgery on her right knee. On October 14, 2000, the decedent's attending nurse documented blood sugar levels at 283 with no call to the attending physician. On October 16, 2000, the decedent's attending nurse documented blood sugar level at 295 and the doctor was notified but failed to give any new orders. On October 16, 2000, the decedent's attending nurses documented decedent's blood sugar level up to 370, the decedent was incoherent, lethargic, unable to lift her left arm, and with "temperature increases to 103.3." On October 18, 2000, the decedent was found nonresponsive with no pulse or respiration and was transported to the hospital where she died the same day as a result of a "massive infection fibrinopurulent pericarditis with cardiac constriction." The Plaintiff's complaint alleges negligence on the part of Life Care in failing to provide the decedent with adequate medical care, failing to adequately communicate her medical condition, status, and care plan to all members of her medical team, and in failing to assess her cardiovascular and central venous access device status, all of which contributed to her untimely demise. The Plaintiff seeks recovery for the:

. . . injuries and wrongful death of Anna Mae Puckett, including;

- i. Severe pain, suffering, mental anguish, and loss of dignity suffered by Anna Mae Puckett, prior to her death on or about October 18, 2000;
- ii. Funeral and burial expenses;
- iii. Pecuniary value of the life of Anna Mae Puckett;
- iv. All other damages allowable and recoverable under Tennessee Law including consortium damages.

On December 10, 2001, Life Care filed an Answer denying a breach of duty and asserting, *inter alia*, as an affirmative defense that Plaintiff's claims were barred as untimely by the statute of limitations as set forth in Tenn. Code Ann. § 28-3-104. On May 10, 2002, Life Care filed a "motion for partial dismissal" pursuant to Tennessee Rule of Civil Procedure 12.02(6) requesting that the trial court dismiss Plaintiff's claims for "severe pain, suffering, mental anguish, and loss of dignity suffered by [Plaintiff] prior to her death on or about October 18, 2000 because it is barred by the one-year statute of limitations found at Tenn. Code Ann. § 28-3-104(a)(1)". The Plaintiff filed a response and a supplemental response which included a copy of an autopsy protocol signed by Dr. Blake, a forensic pathologist, dated December 27, 2000. Plaintiff also filed an affidavit in which he attests that while his mother was at Life Care, he became aware that she was having some problems with elevated blood sugar, but that he was reassured by the nursing staff that they were taking the appropriate measures to care for and treat his mother; and that he did not become aware of the negligent acts or omissions of Life Care until after his mother's death. On October 11, 2002, the Plaintiff filed a motion to amend the complaint to allege that he was not aware of any negligent acts or omissions complained of in the complaint until the Plaintiff reviewed medical records and Dr.

¹The trial court granted Dr. Gronewald's motion for summary judgment and the Plaintiff has not appealed this decision.

Blake's autopsy report. Plaintiff alleged the complaint was filed exactly one year from the date of death of the decedent, and less than one year from the time the Plaintiff became aware of the actual omissions of the Defendants complained herein from the medical records and the autopsy report and therefore, the claim was timely filed.

On June 16, 2003, the trial court heard the motion for "partial dismissal," granted the motion pursuant to Rule 12.02(6), and dismissed with prejudice any and all claims asserted by the Plaintiff based upon the acts and omissions of Life Care committed prior to Oct. 18, 2000 as being barred by the one- year statute of limitations. On September 3, 2003, Life Care filed a motion for summary judgment with a statement of undisputed facts asserting that the Plaintiff failed to allege any act committed by Life Care on or after October 18, 2000, which was the proximate cause of Plaintiff's injury and death. On January 28, 2004, Plaintiff, by and through new counsel, filed a motion for Rule 60.02 relief from judgment or order which was denied by the trial court on February 2, 2004. On March 23, 2004, the trial court entered an agreed order granting the Defendant's motion for summary judgment. The Plaintiff filed a notice of appeal on March 29, 2004.

II.

Issues presented for review are:

1. Whether the trial court erred when it granted the Defendant's motion for "partial dismissal" based upon the running of the statute of limitations.
2. Whether the trial court erred when it declined to grant Plaintiff's Rule 60 motion for relief.

III.

The Defendant's Tenn. R. Civ. P. 12.02(6) motion asserted that the Plaintiff's complaint was not timely filed. The Plaintiff responded by filing an unnotarized autopsy protocol signed by Dr. Blake; Plaintiff's affidavit attesting that he did not discover the acts of negligence of Life Care until after his mother's death; a motion to amend the complaint; and an affidavit signed by Dr. Blake stating that on October 19, 2000, he performed an autopsy on the decedent's body and to a reasonable degree of medical certainty, she died as a result of an infection present at the side of a left subclavian port-a-cath which had been implanted prior to her hospitalization. The trial court treated the motion as one filed pursuant to Tennessee Rule of Civil Procedure 12.02(6). However, Tennessee Rule of Civil Procedure 12.03 provides that if, on a motion for judgment on the pleadings, matters outside the pleadings are presented to and not excluded by the court, then the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56, and all parties shall be given reasonable opportunity to present all material made pertinent by Rule 56. Therefore, in this case, since the Plaintiff presented matters outside the pleadings and these matters were not excluded by the court, we must consider the motion as one for summary judgment.

IV.

Summary judgment is appropriate only when a moving party can demonstrate that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. Tennessee Rule of Civil Procedure 56.04; *Byrd v. Hall*, 847 S.W. 2d 208, 214 (Tenn. 1993). Life Care can meet this burden by either affirmatively negating an essential element of the Plaintiff's case or by conclusively establishing an affirmative defense. *McCarley v. West Quality Food Serv.*, 960 S.W. 2d 585, 588 (Tenn. 1998). If Life Care does not meet this burden, then the Plaintiff's obligation to produce supporting affidavits or discovery materials is not triggered and the motion for summary judgment fails. If, however, Life Care does successfully negate a claimed basis for the suit, then the Plaintiff may no longer simply rely upon the pleadings. In determining whether to award summary judgment, the trial court must view the evidence in the light most favorable to the non-moving party and must also draw all reasonable inferences in the non-moving party's favor. *Staples v. CBL & Assoc.*, 15 S.W. 3d 83, 89 (Tenn. 2000). The court should award summary judgment only when a reasonable person could reach only one conclusion based on the facts and the inferences drawn from those facts. *Id.* Summary judgment is not appropriate if there is any doubt about whether a genuine issue of material fact exists. *McCarley* at 588. We review an award of summary judgment *de novo*, with no presumption of correctness. *Guy v. Mut. of Omaha Ins. Co.*, 79 S.W. 3d 528, 534 (Tenn. 2002).

V.

There is no specific statute of limitations contained in the Tennessee wrongful death statutes, but our courts have uniformly applied the one-year statute of limitations governing personal injuries in wrongful death actions. *Lowe v. Simpson*, 2000 WL 116036 (Tenn. Ct. App.), No. E1999-02548-COA-R3-R3-CV, filed Jan. 28, 2000. Medical malpractice cases are governed by a one-year statute of limitations and a three-year statute of repose, Tenn. Code Ann. § 29-26-116. The Tennessee Supreme Court in 1974 adopted the discovery rule for determining when the statute of limitations begins to run in medical malpractice cases. *Teeters v. Currey*, 518 S.W. 2d 512, 515 (Tenn. 1974). In 1975, the legislature codified the discovery rule in the Medical Malpractice Review Board and Claims Act, now found in Tenn. Code Ann. § 29-26-116 and which provides in pertinent part as follows:

- (a) (1) The statute of limitations in malpractice actions shall be one (1) year as set forth in § 28-3-104.
- (2) *In the event the alleged injury is not discovered within such one (1) year period, the period of limitation shall be one (1) year from the date of such discovery.* (Emphasis added).

Thus, under this rule, the statute of limitations in medical malpractice cases begins to run when the patient discovers, or reasonably should have discovered (1) the occasion, the manner, and

the means by which the breach of duty that caused his or her injuries occurred, and (2) the identity of the person who caused the injury. *Foster v. Harris*, 633 S.W. 2d 304, 305 (Tenn. 1982). However, this rule does not permit a patient to delay filing suit until he or she becomes aware of all of the injurious consequences of the alleged negligence. *Shadrick v. Coker*, 963 S.W. 2d 726, 733 (Tenn. 1998). The statute of limitations begins to run when the patient becomes aware of facts that would put a reasonable person on notice that he or she has sustained an injury as a result of a tortious act of a healthcare provider. *Hathaway v. Middle Tenn. Anesthesiology, P.C.*, 724 S.W. 2d 355, 359 (Tenn. Ct. App. 1986).

So the issue becomes, when did the decedent, or alternatively the Plaintiff, who stands in the shoes of the decedent pursuant to Tenn. Code Ann. § 20-5-106(a), discover or become aware of facts that would put a reasonable person on notice that the decedent had sustained an injury as a result of the alleged tortious acts of Life Care? Life Care says this occurred prior to October 18, 2000. However, there is no indication in the record that either Anna Mae Puckett or her son, the Plaintiff, discovered or should have discovered the occasion, manner and means of the breach of duty that caused her injuries and the identity of the person who caused the injury prior to her death.

According to the complaint, the decedent was in Life Care only five days. She was admitted to Life Care on October 13, 2000, for rehabilitation following knee surgery. Three days later, she was incoherent, lethargic, unable to lift her left arm, and had a high fever. On October 18, 2000, she was found non-responsive and subsequently died on that date. Plaintiff's affidavit indicates that he was not aware of any negligent acts or omissions until he reviewed his mother's medical records and Dr. Blake's autopsy report. All of this, he says, occurred after October 18, 2000. He further states that during his mother's stay at Life Care, he became aware that she was having problems with elevated blood sugar but that he had been reassured by the nursing staff that they were taking appropriate measures to care for and treat his mother. He says that he did not learn of the negligent acts or omissions of Life Care until after his mother's death. These statements were not rebutted by Life Care. It is evident from reading the complaint that the decedent was incoherent by October 16, 2000 and nonresponsive by October 18, 2000. It is not clear when during the decedent's short stay at Life Care that the alleged negligence that proximately caused her death occurred. Viewing the evidence in the light most favorable to the Plaintiff and drawing all reasonable inferences in the Plaintiff's favor, we must conclude that neither the decedent nor the Plaintiff discovered or should have reasonably discovered the occasion, the manner, and the means by which the breach of duty that caused Anna Mae Puckett's injury occurred or the identity of the person who caused the injury until at least the date of the decedent's death on October 18, 2000. Accordingly, by the express terms of Tenn. Code Ann. § 29-26-116(a)(2), the Plaintiff's suit was timely filed.

The Defendant argues that the Plaintiff's claims for pain, suffering, and mental anguish and loss of dignity suffered by the Plaintiff prior to her death on October 18, 2000 should be barred by the one-year statute of limitations since these existed more than one year prior to the commencement of the lawsuit. However, this argument is without merit. The Defendant cannot separate this wrongful death action into component parts and apply a separate statute of limitation to each part. Compensable pain and suffering quite often occurs prior to death and certainly prior to the

commencement of the running of the statute of limitations. When this occurs, it does not necessarily bar the Plaintiff from recovery. If the decedent was damaged by the actions of the Defendant, then she or her legal representative had one year from the date of discovery of the injury, or in the exercise of reasonable care should have discovered the injury, in order to file suit. Since this is a wrongful death case, the damages are as provided for in Tenn. Code Ann. § 20-5-113, which states:

Where a person's death is caused by the wrongful act, fault, or omission of another, and suit is brought for damages, as provided for by §§ 20-5-106 and 20-5-107, the party suing shall, if entitled to damages, have the right to recover for the mental and physical suffering, loss of time, and necessary expenses resulting to the deceased from the personal injuries, and also the damages resulting to the parties for whose use and benefit the right of action survives from the death consequent upon the injuries received.

The fact that a Plaintiff sustains pain and suffering and other compensable injuries prior to his or her death does not alter or shorten the limitations period. It would be an inappropriate result to rule that whereas a Plaintiff has one year to file suit from the date of discovery of the manner and means of the breach of duty, the Plaintiff is not entitled to all the damages afforded by statute simply because some of the damages may have occurred prior to the expiration of the one-year period.

In light of our holding that the suit was timely filed and the order of "partial dismissal" is vacated, the issue of the court's ruling on the Plaintiff's Tenn. Rule of Civil Procedure 60 motion is moot. This matter is remanded to the trial court for further proceedings consistent with this opinion. We tax the costs of this appeal to the Defendant, Life Care of Amercia, d/b/a Life Care of Morristown, for which execution may issue, if necessary.

SHARON G. LEE, JUDGE